IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10462 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANJULABEN DAHYABHAI TRIVEDI - Petitioner(s)
Versus
PUSHPABEN MANGALDAS PATEL & 1 - Respondent(s)

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Appearance :
MR SHIRISH JOSHI for Petitioner(s) : 1,
MR RAVINDRA SHAH for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 01/03/2006

ORAL JUDGMENT

1.The short facts of the case are that the respondent filed Lavad Suit No.2577 of 1978 before the Registrars, Board of Nominee with a prayer inter alia to restrain the petitioner herein who was defendant in the suit from

making any construction in the margin land on the eastern side and to restrain him from using the same. The learned Nominee after the trial of the suit, ultimately passed the judgment and order dated 29.10.1993 whereby he found that as the dispute is outside the scope and ambit of Section 96 of the Gujarat Co-operative Societies Act (hereinafter referred to as the “Act”), there is no jurisdiction with him and therefore, the suit was dismissed. The respondent No.1 preferred the appeal being Appeal No.457 of 1993 before the Gujarat State Government Co-operative Tribunal. The Tribunal found that the dispute would fall under Section 96 of the Gujarat Co-operative Societies Act (hereinafter referred to as the “Act”) and it has also further examined the matter on merits and found that certain constructions are made inspite of the injunction and therefore, ultimately as per the order dated 10.11.1995, the Tribunal allowed the appeal and granted the

injunction as prayed in para 7(A) and qua relief of para 7(B). It is ordered by the Tribunal that the staircase shall remain but the other constructions of wash area (Chokadi), water tank and a sitting place (Otla) if in existence, shall be demolished by the petitioner at her cost. Under these circumstances, the petitioner has approached to this Court by preferring the present petition.

2.Heard Mr. Shirish Joshi for the petitioner and Mr. Ravindra Shah for the respondent No.1, respondent No.2 though served, has chosen not to appear.

3.Mr. Joshi, learned counsel for the petitioner contended that the dispute would fall outside the scope and ambit of Section 96 of the Act and in his submission as it was a dispute between the member and another member of respondent No.2-Society and as no reliefs were prayed against the respondent No.2-Society, the matter would fall outside the scope and ambit

of Section 96 of the Act. He therefore, submitted that the Tribunal ought not to have exercised the jurisdiction by allowing the appeal as the learned Nominee has no jurisdiction. For supporting his contention, he has relied upon the order dated 20.04.1988 passed by this Court (Coram: A.P. Ravani, J.) in Civil Misc. Application No.459 of 1988 in Civil Revision Application No.157 of 1988 and he therefore, submitted that there is a jurisdictional error committed by the Tribunal while allowing the appeal.

4.Mr.Shah, learned counsel appearing for the respondent No.1, while supporting the judgment of the Tribunal has relied upon the decision of this Court (Coram: A.S. Qureshi, J.) in case of Dalpatbhai Bhimjibhai Mehta V/s. Ajitbhai Vadilal Shah and Another reported in 1987(2) GLH(U.J.)8 and contended that the dispute would fall under Section 96 of the Act.

5.If the provision of Section 96 of the Act is

considered as it is, the requirement is of a dispute touching to the constitution, management or business of society by any parties to the dispute which are referred to in clause (a) to (e) of Sub-Section (1) of Section 96 of the Act. Clause (b) of the said Sub-Section, inter alia, provides for a member, past member or a person claiming through the member of a society and therefore, it appears that if the dispute is amongst two members of the same society pertaining to the constitution, management or business of such society, it would fall within scope of Section 96 of the Act. In a Housing Co-operative Society, even otherwise also property is of the ownership of the society and certain rights are only transferred of the property to the members. Therefore, if the dispute is between two members pertaining to any property of the society which is registered under the Gujarat Co-operative Societies Act, such dispute would

fall under Section 96 of the Act. It appears that even in case of Dalpatbhai Bhimjibhai Mehta(Supra), the view expressed by this Court is that the Civil Court will have no jurisdiction in respect of any dispute between the society and its member or between members inter se and such dispute can be raised under Section 96 of the Act before the Nominee's Court.

6.The reliance placed by the learned counsel for the petitioner upon the order dated 20.04.1988 of this Court in Civil Misc. Application No.459 of 1988 is ill founded because in the said case, the Court observed that if the dispute is between two societies, then it will not be covered under the provisions of Section 96 of the Act. Therefore, the requirement for attracting the jurisdiction of the Nominee under Section 96 of the Act is the membership of a society in respect of whom or in connection with its constitution or management

or business, the dispute exists. If it is a dispute between two Co-operative societies who are not the members of each other it stands on different footing. Such are not in the facts of the present case and therefore, the said order is of no help to the petitioner.

7.No other error of jurisdiction is brought to the notice of this Court. Further, the Tribunal upon the appreciation of the evidence on record has found that the construction of wash area (Chokadi), water tank and a sitting place (Otla) were not there when the Court Commissioner's report was prepared. It is also found that if the construction is made subsequently, the same would create an obstacle. Further, it appears that there was also an injunction and therefore, the Tribunal has exercised the discretion and has passed the order of removal of the construction made pending the suit inspite of the injunction. Such an exercise of the power by the Tribunal

cannot be said as perverse which may call for interference by this Court under Article 227 of the Constitution of India. On the contrary, if the construction is made inspite of the injunction, it would be required for the concerned Court or the authority to ensure that status quo ante is maintained with a view to give full effect of the orders of this Court.

8. In view of the above, petition fails. Hence, the same is dismissed. Rule discharged. I.R. vacated. Considering the facts and circumstances, there shall be no order as to costs.

(JAYANT PATEL,J.)

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